

# TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director  
Ron Jones, Director



RECEIVED

460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

02 OCT 4 PM 3 20

## MEMORANDUM

TN REGULATORY AUTHORITY  
DOCKET ROOM

TO: Chairman Sara Kyle  
Director Deborah Taylor Tate  
Director Pat Miller

FROM: Eddie Roberson, Chief, Consumer Services Division  
Ed Mimms, Manager, Do Not Call Program

Lynn Questell, Counsel

DATE: October 3, 2002

SUBJECT: Settlement with Pacific Guarantee Mortgage Corporation  
Docket No. 02-00944

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and Pacific Guarantee Mortgage Corporation (referred hereafter to as "Pacific") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA §65-4-401 *et seq.* Pacific registered with the Tennessee Regulatory Authority ("Authority") as a solicitor on May 24, 2002.

Five (5) separate complaints have been registered against Pacific with the Authority alleging that the company violated TCA §65-4-401 *et seq.* This Settlement requires Pacific to make a payment of \$6,000 to the Authority along with assurances from Pacific that they will fully comply with applicable state law. The terms of this Settlement require Pacific to pay the \$6,000 to the Authority within thirty (30) days of Authority ratification of the Settlement. A representative for Pacific will be available telephonically at the October 21, 2002 Conference to answer any question you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against Pacific.

Staff submits the attached Settlement Agreement for your deliberation at the October 21, 2002 Authority Conference.

cc: Director Ron Jones  
Richard Collier, General Counsel  
Bradley F. Simon, Senior Vice President, Pacific Guarantee Mortgage Corporation

# THE TENNESSEE REGULATORY AUTHORITY

## AT NASHVILLE, TENNESSEE

IN RE:	)		
	)		
ALLEGED VIOLATIONS OF TENN.	)	TRA DOCKET NO.	02-00944
CODE ANN. §65-4-401 <i>et seq.</i> , DO-NOT-	)		
CALL SALES SOLICITATION LAW,	)	DO-NOT-CALL	T01-00300
AND RULES OF TENNESSEE	)	PROGRAM	T01-00315
REGULATORY AUTHORITY, CHAPTER	)	FILE NUMBERS	T01-00333
1220-4-11, BY:	)		T01-00334
	)		T01-00410
PACIFIC GUARANTEE MORTGAGE	)		
CORPORATION	)		
	)		

---

## SETTLEMENT AGREEMENT

---

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Pacific Guarantee Mortgage Corporation ("Pacific" or the "Company"). This Settlement Agreement is subject to the approval of the TRA.

This Settlement Agreement pertains to five (5) separate complaints received by the CSD alleging that Pacific violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations. TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone

solicitations. TENN. CODE ANN. § 65-4-404(d), requires that persons and entities desiring to make telephone solicitations to residential subscribers pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations.

The CSD's investigation in this docket commenced after it received a complaint (T02-00300) on May 10, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 7, 2002. The CSD provided Pacific with notice of this complaint on May 20, 2002. At the time this call was made, Pacific was not registered in the Tennessee Do-Not Call Program.

The CSD received a second complaint (T02-00318) on May 22, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 17, 2002. The CSD provided Pacific with notice of this complaint on May 23, 2002.

The CSD received its third complaint (T02-00333) on May 29, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 16, 2002. The CSD provided Pacific with notice of this complaint on May 30, 2002.

The CSD received its fourth complaint (T02-00334) on May 29, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 17, 2002. The CSD provided Pacific with notice of this complaint on May 30, 2002.

The CSD received its fifth complaint (T02-00366) on June 11, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone

solicitation from Pacific on May 9, 2002. The CSD provided Pacific with notice of this complaint on June 20, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Pacific in this proceeding is twelve thousand dollars (\$12,000), arising from the five (5) complaints and the failure to register in the Do-Not-Call Program. CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b) during the negotiations which resulted in this agreement, including Pacific's size, financial status, and good faith and the gravity of the violations.

Pacific is a company employing approximately six hundred (600) workers nationwide and has approximately thirty (30) workers in two offices in Tennessee. Its executive office is located in Chicago, Illinois. During the investigation, Pacific demonstrated its good faith by registering as a telephone solicitor with the TRA on May 24, 2002, four days after its in-house counsel received notice of the first violation. Pacific did not dispute that the calls were made and expressed an interest in resolving this matter. Further, after receiving notice of the complaints, Pacific began its own investigation of the alleged complaints. Company officials also notified the CSD that they were cooperating with federal law enforcement agencies as a result of certain business practices allegedly taking place at the company's Reston, Virginia office. The CSD determined through its investigation that the toll-free telephone number provided in each of the solicitation calls

connected to an incoming call center working on behalf of the Pacific office located in Reston, Virginia.

In an effort to resolve these five (5) complaints, represented by the file numbers above, CSD and Pacific agree to settle this matter based upon the following acknowledgements and terms subject to approval by the TRA:

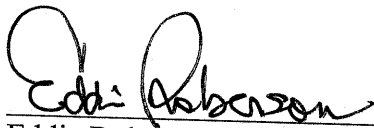
1. Pacific neither admits nor denies that the complaints against it are true and valid and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Pacific has been registered with the TRA as a telephone solicitor since May 24, 2002, and obtains a monthly copy of the Do-Not-Call register.
3. Since receiving notice of the complaints that are the subject of this Settlement Agreement, Pacific has exhibited good faith in its efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1) and has acted in a cooperative manner in attempting to resolve this matter.
4. Pacific agrees to make a settlement payment of six thousand dollars (\$6,000.00), as authorized by TENN. CODE ANN. §65-4-405(f) to the TRA within thirty (30) days of the date the TRA approves this Settlement Agreement.<sup>1</sup> Upon payment of the amount of six thousand dollars (\$6,000.00) in compliance with the terms and conditions of this Settlement Agreement, Pacific will be excused from further proceedings in this matter.

---

<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 02-00944.

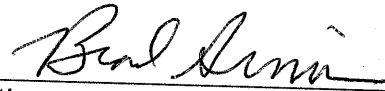
5. Pacific agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. The Company voluntarily subscribed to the TRA's Do-Not-Call Register and has taken measures designed to prevent calls to Tennessee residents listed on the Do-Not-Call Register.
6. Pacific agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
7. The TRA and Pacific agree that the payment of \$6,000.00 to the TRA represents the settlement of all claims the TRA could bring against Pacific up to and including the date of this Settlement Agreement.
8. If any clause, provision or section of this Settlement Agreement is for any reason held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
9. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

10. In the event of any failure on the part of Pacific to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket for the prosecution of the five consumer complaints that are the basis of this docket. Any costs incurred in enforcing the Settlement Agreement shall be paid by Pacific.



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

10/4/02  
Date



Signature

Brad Simon  
Print Name

Corporate Secretary  
Print Title  
Pacific Guarantee Mortgage Corporation

9-23-02  
Date